NOTES OF CASES.

Gifts Causa Mortis—Elements—Sufficiency of Evidence—In re Liphart, 227 Fed. 135.—In the principal case the court considered whether or not the evidence before it established a gift causa mortis, upon the part of the decedent, a bankrupt's wife to her son, of the property in question and adopted the opinion of the referee in which it is said: "Commenting upon this method of disposing of personal property between donor and donee, the Court of Appeals of Virginia, in Johnson *v.* Colley, 101 Va. at page 416, 44 S. E. at page 722, 99 Am. St. Rep. 884, lays down the following as being the essential attributes of a gift causa mortis: '(1) It must be of personal property; (2) the gift must be made in the last illness of the donor, while under the apprehension of death as imminent, and subject to the implied condition that if the donor recover of the illness, or if the donee die first, the gift shall be void; and (3) possession of the property given must be delivered at the time of the gift to the donee, or to some one for him, and the gift must be accepted by the donee." Not only is this view in thorough accord with those expressed in a long line of decisions, both in this country and in England, but, wherever it has been attempted to establish a gift causa mortis, the courts have been inclined to scrutinize closely all of the attending circumstances and to allow such gifts only the clearest and most convincing proof. Thomas' Administrator *v.* Lewis et al., 89 Va. 1, 15 S. E. 389, 18 L. R. A. 170, 37 Am. St. Rep. 848; Miller *v.* Jeffress, 4 Grat. (Va.) 472; Yancy *v.* Field, 85 Va. 761, 8 S. E. 721; Spooner *v.* Hilbish, 92 Va. 341, 23 S. E. 751; Basket *v.* Hassell, 170 U. S. 602, 2 Sup. Ct. 415, 27 L. Ed. 500; Hitch *v.* Davis, 3 Md. Ch. 266; Waite *v.* Grubbe, 43 Or. 406, 72 Pac. 206, 99 Am. St. Rep. 764; Drew *v.* Hagerty, 81 Me. 231, 17 Atl. 63, 3 L. R. A. 230, 10 Am. St. Rep. 255; Cyc. Vol. 20, 1228; Jones Adm'r *v.* Irvin, 4 Va. Law Reg. 526. Furthermore, not some, but all, of these elements must be present, and each must be established by the most cogent proof, and such as to leave no doubt as to the character of the transaction; for to require a less rigid rule of proof, as said in Miller *v.* Jeffress, 4 Grat. (Va.) 480, "would introduce in such cases all the mischiefs of fraud, perjury, and surprise, which the law seeks, as far as practicable, to guard against.'" In the principal case it appeared that the bankrupt's wife, who died immediately following a surgical operation, told the bankrupt, before the operation, that her furniture and her jewelry was to go to her son, and that certain articles were to go to her mother and brothers, and a brother of the bankrupt; that her desires with regard to her mother and brothers and the bankrupt's brother had not been complied with, but that the bankrupt had listed the property for taxation in his own name, and stored it, or some of it, in his mother's name, though he was his son's duly qualified

guardian; that the bankrupt described the property as his in a lease. The referee's opinion upon this evidence is thus stated: "Viewing the statements, purported to have been made by Mrs. Liphart, in the light of the language used by the court in the case of Miller *v.* Jeffress, supra, it is clear to my mind that the same are merely testamentary; and mere testamentary declarations upon the part of the donor, unaccompanied by delivery of the property, will not sustain a gift causa mortis. There must be a delivery of the property to the donee, or some one for him, at the time of the gift, and the title, though a defeasible one, must vest as of the time of the gift; otherwise the donor's declarations will be considered as testamentary only. Thomas' Administrator *v.* Lewis et al., 89 Va. 1, 15 S. E. 389, 18 L. R. A. 170, 37 Am. St. Rep. 848."

In the case of Jones *v.* Irvin, 4 Va. Law Reg. 525, a case decided by the corporation court of Danville, Va., it was held that such a gift was not established as there was no delivery of the property to the donee or his agent. The doctrine of gifts of personalty has been luminously considered in this state in late years. It is unnecessary to cite the different cases, but that of Spooner *v.* Hilbish, 92 Va. 333, is one of the latest. A most admirable statement of the doctrine applicable to both gifts inter vivos and causa mortis, by Professor Graves, prepared when he was one of the editors of the Law Register, can be found in the first volume of that magazine, page 882. This learned and elaborate summary, in which the Virginia and many other cases are cited, shows that the delivery of the subject, actual or constructive, is essential to sustain a gift of any character of personal estate. See also discussion in 2 Va. Law Reg. 689; note 10 Va. Law Reg. 1031.

Bankruptcy—Status of Trustee—Bailey *v.* **Baker, etc., Co., 36 U. S. Sup. Ct. Rep., 50.**—The trustee in bankruptcy takes the status of a creditor holding a lien as of the time when the petition in bankruptcy is filed, under the provision of the bankrupt act, that a trustee in bankruptcy "as to all property in the custody, or coming into the custody, of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings."

The court in this case said: "When not otherwise specially provided, the rights, remedies, and powers of the trustee are determined with reference to the conditions existing when the petition is filed. It is then that the bankruptcy proceeding is initiated, that the hands of the bankrupt and of his creditors are stayed, and that his estate passes actually or potentially into the control of the bankruptcy court. We have said: 'The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. The exclusive jurisdiction of the bankruptcy court is so far in rem that the